THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.15254 OF 1999

Date:10-03-2006

Between:

Naineni Krishna Rao and others …Petitioners

And

Yerroju Jagannadha Rao and others …Respondents

THE HON'BLE SRI JUSTICE BILAL NAZKI

AND

THE HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION NO.15254 OF 1999

O R D E R (Per the Hon'ble Sri Bilal Nazki, J):

Heard learned counsel for the parties.

An application under Section 8(1) of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 (for short "the Act") was filed by the respondents herein against the writ petitioners before the Special Court under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982. The applicants-respondents claimed that they were the absolute owners of the schedule property, which was encroached upon by the respondents-writ petitioners. They sought a direction that the respondents should deliver the vacant possession of the schedule land to them and to punish the respondents for the offence of land grabbing. According to the applicants before the Special Court, the total extent of Sy.No.100 of Hydernagar village was Acs.10.23 guntas. One late Syed Jahangir was owning a half share in the said land, while the remaining half share was owned by Gunjari Balaiah, Baghaiah and Pochaiah. The said persons were absolute owners and pattedars of the total extent of Acs.10.23 guntas of land covered by Sy.No.100. After the death of the original owners and

pattedars, their legal heirs came to an understanding among themselves and handed over the suit land to one Nagender Reddy for development and for converting the same into plots for disposal. The boundaries of Sy.No.100 were fixed on 22-11-1985 by the Collector, Land Records by conducting a panchanama. The legal heirs of the original pattedars divided the land into plots after leaving ample space for roads, bridge etc., after obtaining a layout from Hydernagar Gram Panchayat. The applicants before the Special Court purchased some of the said plots under registered sale deeds in the years 1989, 1990 and 1991 from the lawful owners thereof and took possession of the same. Thereafter, the applicants were in peaceful possession and enjoyment of their respective plots. They also formed into a registered society for the maintenance and development of the site and they paid non-agricultural land tax in 1993. The name of the applicants' society had been mutated in the revenue records in the year 1993 itself and the land in question has been described in the revenue records as plots. According to the applicants before the Special Court, the respondents hatched a plan to grab the land belonging to the applicants in Sy.No.100 by manipulating the revenue records with the connivance of the revenue officers. Respondent Nos.1 to 3 and their men have illegally occupied the application schedule land belonging to the applicants and started forming roads in the said land. When questioned, the respondents stated that they got the boundaries of the land re-fixed through revenue officials and they have a right over an extent of Acs.3.05 gts of land in Sy.No.100 of Hydernagar village. The respondents declined to show any order passed by the revenue authorities with regard to re-fixing of the boundaries of Sy.No.100 of Hydernagar village to the applicants. According to the applicants before the Special Court, the respondents without any manner of right, title or interest illegally occupied an extent of Acs.3.05 gts of land in Sy.No.100 of Hydernagar village.

On the basis of these pleadings, the following issues were framed.

1. *Whether the applicants are the owners of the application schedule property?*
2. *Whether the respondents have title to the application schedule property?*
3. *Whether the respondents are land grabbers within the meaning of Section 2(d) and 2 (e) of the Act XII of 1982?*

4. *Whether the applicants are entitled for any damages, if so, to what amount?*

5. *To what relief?*

All these issues were decided in favour of the applicants-respondents herein by the Special Court and the decree was passed. On issue No.1, the Special Court held that the applicants were the absolute owners of the respective plots purchased by them. On issue No.2, the Court held that the respondents had no title on the schedule property and on issue No.3 it was held that the respondents were land grabbers. The evidence of P.W.1 and R.W.1 has been discussed by the Special Court in Paras 10 and 11, which is reproduced below.

> *"P.W.1 denied the suggestion put to him in the cross examination that the extent of Sy.No.100 of Hydernagar village is only Ac.7.03 guntas. He stated that he was not aware whether the respondents got the land in Sy.No.199 of Kukatpally village and Sy.No.100 of Hydernagar village measured and surveyed by the Inspector of Survey and that he was not aware that in the said survey the overlapping area was deleted and the extent of Sy.No.100 was reduced to Acs.7.03 guntas. P.W.1 further stated in his cross examination that he was not aware of Ex.B1 order dated 24-05-1995 passed by the D.R.O and the supplementary sethwar issued by the Survey and Land Records authorities."*

> *"As against the evidence of P.W.1, there is the evidence of R.W.1, the first respondent. R.W.1 stated in his evidence that his father purchased Sy.No.199 of Kukatpally village ad measuring Acs.19.10 gts about fifty years ago, that Sy.No.100 of Hydernagar village is situated adjacent to Sy.No.199 of Kukatpally village that the area of Sy.No.100 is Acs.7.03 guntas, but its extent was shown as Acs.10.00 and odd in the revenue records, that about 4 or 5 years back they got Sy.No.100 and Sy.No.199 measured by G.D. Inspector, that the Inspector of Survey found the extent of Sy.No.100 to be Acs.7.03 guntas and the extent of Sy.No.199 of Kukatpally village to be Acs.19.10 guntas, that the Inspector of Survey prepared Ex.B2 panchanama and also prepared Ex.B3 sketch of Sy.No.199 of Kukatpally village and that subsequently the D.R.O passed Ex.B1 order dated 24-05-1995 deleting the overlapping extent of Ac.3.10 guntas from Sy.No.100 and adding it to Sy.No.199 of Kukatpally village by correcting the boundaries. R.W.1 denied having grabbed any extent in Sy.No.100 of Hydernagar village. He also denied the suggestion put to him in the cross-examination that the respondents managed with the survey*

officials and created records in their favour after sending notices in the names of dead persons. R.W.1 admitted that his family owns an extent of Acs.56.00 in that area comprising of Sy.Nos.198, 199, 204 and 205. He also admitted that the entire Sy.No.100 of Hydernagar village was divided into plots and was sold away. R.W.1 filed Ex.B4 certified copy of the corrected pahani for the year 1993-94 wherein the extent of Sy.No.100 was shown as Acs.7.03 guntas and also filed Ex.B5 certified copy of the pahani for the year 1973-74 showing the extent of Sy.No.199 as Acs.19.10 guntas."

In paragraph 19, the Special Court recorded as under:

"By conveniently coining a theory of overlapping as propounded by the respondents and accepted by the D.R.O allegedly based on the report of the Survey officials, the poor applicants who are almost deserted by their vendors are being put to loss. The heirs of the deceased pattedars washed off their hands by selling away the plots in Sy.No.100 of Hydernagar village and left the applicants and other purchasers to their fate."

Ex.B1 was an order passed by the District Revenue Officer in favour of the writ petitioners and according to the Special Court, the respondents-writ petitioners took advantage of this order and forcibly occupied an extent of Acs.3.10 guntas in Sy.No.100 and according to the Special Court, Ex.B1 could not destroy the pre-existing title of the applicants.

After going though the evidence and the findings of the Special Court, we are of the view that this was not a case of land grabbing and at best, it could be a dispute with regard to boundaries or even with regard to title. In this connection, we rely on the judgments of the Supreme Court reported in ***Gouni Satya Reddi v.Government of Andhra Pradesh and others.*** In this judgment, it has been discussed in detail as to what is meant by a land grabbing. Unless there is an intention of grabbing the land illegally, the provisions of the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 would not be applicable. The Supreme Court in paragraph 9 held as follows:

> *"From a reading of the definitions of the phrases "land grabber" and "land grabbing" it is clear that the grabbing of any land must be without any lawful entitlement and with a view to take possession of such lands illegally. That is to say the land grabber must be aware of the fact that he is entering into the possession illegally and without any lawful entitlement. If such elements as indicated above are missing in our view, it would not be a case of land grabbing"*

Similarly, this Court in ***M.Yadagiri Reddy v. V.C.Brahmanna and another*** held in paragraph 24 of the judgment as under:

> *"The writ petitioner does not dispute the title of the respondent-applicant in respect of the land purchased by him under the sale deed referred to hereinabove. In the counter as well as in the evidence he stated in clear and categorical terms that he has no concern with the respondent-applicant's land. That the land in his possession is totally different from the land in respect of which the respondent-applicant asserts his right, title and interest. The petitioner claims that he is the owner of an extent of Acs.20.13 guntas in SY.Nos.33/10 and 33/11. This aspect of the matter cannot be ignored notwithstanding the submission made by the learned Senior Counsel appearing on behalf of the respondent-applicant relying on certain stray sentences in the evidence of the writ petitioner. The stray sentences elicited in the cross-examination, in our considered opinion, cannot be relied upon to ignore the very claim of the writ petitioner that he has nothing to do with the respondent-applicant's land. The writ petitioner asserted that the land which is in his possession is agricultural land with a farmhouse, well, lemon and goa trees whereas the land claimed by the respondent-applicant, even according to him, is a waste land containing some shrubs which he wanted to clear though his Manager. It is precisely for that reason, the writ petitioner filed I.A.No.625 of 2004 under Order 26, Rule 9 of CPC with a prayer to appoint an Advocate-Commissioner with the assistance of a Surveyor for local inspection to elucidate the facts of physical features of the land owned by him for the just decision of the case. That application has been dismissed by the Special Court after the pronouncement of the judgment in the main case."*

Following these judgments, we do not find that this was a case of land grabbing and as such, the Special Court was not correct in allowing the application under

Section 8 (1) of the Act. Therefore, the writ petition is allowed. The order dated 07-05-1999 passed by the Special Court in LGC No.42 of 1997 is quashed. No order as to costs.

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(Bilal Nazki, J)

10th March, 2006

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(C.V.Ramulu, J)

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